

# EXHIBIT 7



**IMPLEMENTATION OF  
REVISION 7 TO ARTICLE V OF  
THE FLORIDA CONSTITUTION**

**SUBMITTED TO:  
THE FLORIDA LEGISLATURE**

**PHASE TWO  
REPORT**

**SUBMITTED BY:**

**March 11, 2003**

**MGT**  
*of America*

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**RECOMMENDATION 2.1-2:**

Reduce use of private counsel for case workload conflicts by hiring additional public defender staff in circuits where projected demand materially exceeds capacity. Until workload standards can be established, the additional position needs should be predicated upon existing certifications of inadequate resources, pursuant to 27.54(2)(b), F.S., and assurances that the level of demand will continue for the foreseeable future.

The most obvious application of this recommendation is in the 11<sup>th</sup> circuit where the state should convert the 82 "conflict attorney" positions being provided by the county into assistant public defender positions. It should be noted, however, that the county directly funds only 47 of these positions with the balance of approximately \$2 million paid through the Grants and Donations Trust Funds. It may be possible to convert some or all of these monies to state use.

All other circuits should be surveyed to determine which, if any, have current certifications of inadequate resources, pursuant to 27.54(2)(b), F.S. The bases for these certifications should be examined and evaluated to determine whether the stated circumstances are not only still valid but are also expected to continue for the foreseeable future. If so, additional assistant public defenders and their associated support positions should be funded and hired to replace the number of equivalent full-time private attorneys being used for workload conflicts.

**RECOMMENDATION 2.1-3:**

Conduct studies to establish public defender workload standards and funding formula. The studies should include definitions of all major activities performed by each type of position within all public defender offices across the state. A workload-based standard should be developed for each activity using a highly structured and controlled Delphi approach, similar to methodology used for the judicial weighted caseload study.

There are several reasons why new workload standards and funding formula should be developed: First, the results generated by the current methodology lack credibility. Second, public defender processes have changed significantly since 1973 when the original studies were conducted, particularly because of technology's impact. And third, the standards and formula should reflect Florida's laws, organization, policies and procedures rather than a set of assumptions that can generally apply across the country.

The study should first define the major activities performed by each type of position within all public defender offices across the state. The work activity definitions may be stratified for small, medium and large circuits and should differentiate among the major types of cases. Each work activity definition should also specify the primary steps performed in completing a unit of output for that activity. Once developed, these definitions should be reviewed and approved by a project task force of public defenders and/or their representatives.

**Recommendations to Increase Efficiency/Reduce Costs of  
Essential Judicial System Activities**

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Upon approval of the case type and activity definitions, workload standards should be established. The most cost-effective method for establishing standards is a Delphi approach, similar to the judicial weighted caseload study but in a more highly structured and controlled setting. The standards should then be tested and validated by applying sample workload data. This may include measures in addition to caseload, such as dispositions. Funding formulas should then be developed to calculate the number and cost not only of assistant public defenders but also of supervisors, investigators, and support personnel.

Implementation of this recommendation will necessitate:

- joint participation by the legislature and the FPDA in the project to encourage mutual acceptance of the results ;
- ~~establishment of plans and specifications for the study;~~
- determination as to whether an outside expert is needed to conduct the project; and
- appropriation of funding for the project.

**RECOMMENDATION 2.1-4:**

**Continue to use private attorneys to represent indigent defendants in ethical conflict cases but emphasize the need to reduce the number of ethical cases to a minimum. An approach used in at least two circuits to reduce the number of cases declared ethical conflicts was to require personal approval of the public defender in addition to approval by the responsible division head.**

Ethical conflicts occur when the public defender has adverse or hostile interests regarding a defendant that may interfere with quality representation. This could occur when two persons are charged in the matter and may accuse and/or testify against each other. It could also occur when the public defender has previously represented a victim or a key witness.

The number and cost of ethical conflict cases is very significant. As previously referenced, more than 27,500 cases were reported in FY 2001. In the prior fiscal year, counties recorded expenditures of nearly \$37 million for ethical conflict cases. Ways to reduce these costs therefore deserve substantial attention.

Cost reduction options that were considered include:

- Assign public defenders from other circuits to represent the client(s) rather than private attorneys;
- Establish a "firewall" within the public defender office so that an ethical conflict by an attorney in one part of the office could be handled by an attorney in the other part of the office;